IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 22465 of 2004(S)

OA.229/2002 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:

AJITH KUMAR.T. AGED39 YEARS,
S/O.THANKAPPAN, EX.SALESMAN, UNIT RUN CANTEEN,
INS VALSURA, JAMNAGAR, R/A.OLIPURATH VADAKKETHIL
HOUSE, ARINALLOOR P.O., KOLLAM - 690 538.

BY ADV. SRI.P.C.SEBASTIAN

RESPONDENTS:
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1. THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM, REP. BY ITS REGISTRAR,
ERNAKULAM, KOCHI 682 017.

2. THE FLAG OFFICER, COMMANDING IN CHIEF,
HEAD QUARTERS, SOUTHERN NAVAL COMMAND,
KOCHI 682 004.

3. THE COMMANDING OFFICER, INS VALSURA
JAMNAGAR, PIN - 361 150.

4. THE OFFICER IN CHARGE, UNIT RUN CANTEEN,
INS VALSURA, JAMNAGAR, PIN - 367 150.

5. UNION OF INDIA, REP. BY THE SECRTARY,
MINISTRY OF DEFENCE, NEW DELHI.

BY ADV. SRI.C.S.ABDUL SAMMAD, ADDL.CGSC (FOR R1 TO R5)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JP

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE ORDER DATED 05.03.2004 ISSUED BY THE IST RESPONDENT TRIBUNAL IN O.A. NO.229/02 FILED BY THE PETITIONER.

EXT. P2: COPY OF THE LETTER NO.DC-01/AKT DATED 19.01.2002 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT. P3: COPY OF THE ORIGINAL APPLICATION NO.229/02 FILED BY THE PETITIONER BEFORE THE IST RESPONDENT.

EXT. P4: COPY OF THE REPLY STATEMENT DTD.28.11.2002 FILED ON BEHALF OF THE OFFICIAL RESPONDENTS IN THE O.A. NO.229/02.

EXT. P5: COPY OF THE REJOINDER DATED 18.03.2003 FILED BY THE PETITIONER/APPLICANT IN O.A. 229/02.

EXT. P6: COPY OF THE ADDITIONAL REPLY STATEMENT DATED NIL FILED BY THE OFFICIAL RESPONDENTS IN O.A. 229/02 BEFORE THE IST RESPONDENT TRIBUNAL.

/TRUE COPY/

P.A. TO JUDGE

JP

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.22465 of 2004-S

Judgment

Balakrishnan Nair, J.

The petitioner was an employee of the Unit Run Canteen attached to INS Valsura, Jamnagar. He was engaged as a Canteen Boy in 1984. Later, he was appointed as a Salesman w.e.f. 01.01.1985 in the scale of pay of Rs.550-850. From 1989 onwards, he was working as a Cashier in the Canteen on a monthly salary of Rs.600/. He continued in that post upto 28.02.2001. Thereafter, he was posted as Salesman, it is submitted.

2. The petitioner submits, the Apex Court in **Union of India v. M.Aslam** (2001 SCC (L&S) 302) has held that employees of Unit Run Canteen should be treated as Government servants and they should be given the minimum time scale of pay applicable to equivalent categories. The Government was also directed to frame detailed Rules regarding the service conditions of such employees. Pursuant to the said direction, the Central Government framed Annexure A3 Rules produced in Ext.P3 OA. Claiming the benefit of the Judgment in Aslam's case mentioned above, the petitioner approached the

CAT, Ahmedabad Bench. The said OA was disposed of by Annexure A4 order attached to Ext.P3. The petitioner was directed to file representation before the competent authority and the authority was directed to consider and pass orders on it. Pursuant to the said direction, the petitioner filed a representation. That stood rejected by Ext.P2 order. Challenging that order, the petitioner filed OA No.229/02, a copy of which is produced as Ext.P3. The CAT considered the claim of the petitioner and noticing the contentions of the respondents, dismissed the OA by Ext.P1 order. Hence this Writ Petition, challenging Ext.P1 order and Ext.P2 order, terminating him from service.

3. The petitioner submitted that he being an existing employee, is entitled to the benefit of the Judgment in Aslam's case. But, his case was referred to the Selection Board contemplated under paragraph 12 of Annexure A3 Recruitment Rules, as if he was a fresh applicant for appointment. In the meantime, there were certain allegations regarding the misappropriation in the canteen. Three officers were facing court martial proceedings. Upon enquiry, those Officers were found guilty of the charges. It appears, incidentally, the petitioner was also found responsible for the misappropriation, though he was only a witness in that enquiry. Relying on the said enquiry report, the impugned

order of termination has been passed. According to the petitioner, he should be treated as a Government servant and therefore, his services could have been terminated, only following the due procedure prescribed as per the Rules. At any rate, a fair procedure in conformity with the rules of natural justice should have been followed, it is submitted. So, the termination is void ab initio, it is pointed out.

4. Going by the Judgment of the CAT, we find that the tribunal was carried away by the allegations against the petitioner and declined to interfere with the termination by affirming the stand of the respondents. It is not in dispute that in view of Aslam's case, the petitioner should be treated as a Government servant. If that be so, he can be sent out of service only by following a fair procedure in conformity with the principles of natural justice. His case was dealt with as if he was a new applicant for appointment in service by the Selection Board. The same is illegal and impermissible. Further, dealing with Annexure A3 Rules, the Apex Court, in **Dharma Nand v. Union of India** (2004 SCC (L&S) 1034) held that by framing the said Rules, the benefit conferred by the Apex Court in the Judgment in Aslam's case for the Canteen employees, cannot be taken away by the Government. The relevant portion of

the said Judgment reads as follows :

> "In the present case also, the petitioners Dharma Nand and Dayal Singh were working as canteen employees which was under the Defence Ministry and they were also entitled to be treated as Government servants. The counsel for the Union of India submitted that the petitioners along with others, were appointed as canteen employees on temporary basis and the appointment by itself was given for a fixed term and on completion of the term, their services were terminated. The counsel also drew our attention to the Rules framed for this purpose for the canteen employees. The aforesaid Rules have been framed as if they were not Government servants. The decision quoted above would show that the canteen employees should have been treated as Government servants. That by itself is sufficient to hold that the Rules framed for such temporary appointment are not applicable to these employees.
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> 5. We are of the view that if these petitioners should

> have been treated as Government servants, the services could not have been terminated on the ground that their services were no longer required. The only ground stated for terminating service was that it was only for 5 years' tenure and their services were no longer required. We hold that termination was illegal and the petitioners are entitled to be reinstated in service forthwith. The petitioners are also entitled to get consequential benefits. The petitioners are entitled to get consolidated amount from the date of the termination till the date of judgment in *Union of India v. M.Aslam*, namely 4.1.2001 and from that date till reinstatement, they shall be paid minimum of the pay scale applicable to their counterpart serving in the CSD canteens"

Going by the above quoted decision, the Rules framed by the Government or the method of selection provided therein, cannot be used to deny the service benefits available to the existing employees.

5. So, we are of the view that the petitioner could have been sent out of service, only after serving him a charge sheet, obtaining his explanation,

conducting an enquiry, in case he denies the charges and based on the findings in that enquiry. In this case, no such procedure was followed by the respondents. The Selection Board obtained some report from an enquiry, held behind his back and sent him out of service. So, the entire procedure followed which resulted in the issuance of the termination order of the petitioner is vitiated. it is so declared. Therefore, we hold that the termination was ab initio void and he is continuing in service. The respondents may treat that the petitioner is under suspension and if they propose to take disciplinary action against him, liberty for the same is reserved. If they propose to do that, they may initiate the proceedings by keeping the petitioner under suspension within three months from today. Otherwise, he shall be reinstated in service with continuity of service and backwages. If the petitioner is suspended within three months and disciplinary proceedings are initiated against him, he shall be paid subsistence allowance for the entire period he was kept out of service. The same shall be paid within one month from the date of suspension.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR,JUDGE

25.09.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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